IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2506 OF 2003
ALONG WITH
WRIT PETITION NO.75 OF 2004
AND
NOTICE OF MOTION NO.669 OF 2005
IN
WRIT PETITION NO.75 OF 2004

WRIT PETITION NO.2506 OF 2000

Middle Income Group Colony Residents' Association and another.).. PETITIONERS

Versus

State of Maharashtra and others).. RESPONDENTS

Mr.V.V. Joglekar i/b.Basant Tilokani & Co. for the Petitioners.

Mr.R.M. Sawant, Government Pleader, for Respondent Nos.1 to 4.

Mr.C.J. Sawant, Senior Counsel, with Mr.V.C. Ghosalkar for Respondent No.6.

WITH

WRIT PETITION NO.75 OF 2004
AND
NOTICE OF MOTION NO.669 OF 2005

Ninad Gas Service and another).. PETITIONERS

Versus

State of Maharashtra and others).. RESPONDENTS

Mr.Atul Rajadhyaksha with Mr.A.S. Khandeparkar for the Petitioners.

Mr.R.M. Sawant, Government Pleader, for Respondent Nos.1 and 2.

Mr.C.J. Sawant, Senior Counsel, with Mr.V.C.Ghosalkar for Respondent No.4.

CORAM: V.G. PALSHIKAR, Ag. C.J. AND SMT. NISHITA MHATRE, J.

DATED: 16TH FEBRUARY 2006

P.C. :

1. Both these petitions are being heard together as the question involved is the same. The Petitioners in both these Petitions challenge the allotment of a plot of land made in favour of the Chief Promoter of Sagar Darshan Co-operative Housing Society (hereinafter referred to as "the proposed Society"). The Petitioners in each of the Petitions claim the same "plot of land" for themselves. Writ Petition No.2506 of 2003 has been filed by the Middle Income Group Colony Residents' Association (hereinafter referred to as "the Association") and their President praying that the allotment made by Maharashtra Housing and Area Development Authority (hereinafter referred to as "MHADA") in favour of the Chief Promoter of the proposed Society should be cancelled and the plot be allotted to the Petitioners. The Petitioners in Writ Petition No.75 of 2004 are Ninad Gas Services, a partnership firm running a gas agency, and one of its partners (hereinafter referred to as "the Gas Agency"). The Association is a Respondent to the Petition filed by the Gas Agency and vice versa.

2. The grievances set out by the Petitioners in both the Petitions are principally as follows :-

(i) Regulation 16 of the Maharashtra Housing and Area Development (Disposal of Land) Regulations, 1982 (hereinafter referred to as "the Regulations") is unconstitutional.

(ii) Assuming the Regulation is valid, it does not apply to the "piece of land" which has been allotted to the proposed society as it is not a "plot" as defined under the Regulations nor is it a "plot" under the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 (hereinafter referred to as "the Rules).

(iii) The "piece of land" cannot be considered as "vacant land" as defined under Rule 2(n) of the Rules and, therefore, cannot be allotted under Regulation 16.

(iv) The Petitioners have a preferential right under Rule 16 to be allotted the land since they are tenants in the structures constructed by MHADA on the land.

3. The Respondents have opposed the interpretation placed on the provisions of law by the learned Counsel appearing for the Petitioners in both the Petitions and have submitted by drawing our attention to the pleadings on record that the Petitioners themselves have pleaded that the "pieces of land" allotted to the proposed Society admeasure 800 square meters and 350 square meters and the land has been referred to as a "plot" in the Petitions. It is submitted on behalf of the Respondents that the allotment in favour of the proposed Society for housing Government servants has been made in accordance with the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as "the Act"), the Regulations and the Rules. The Respondents pointed out that lands admeasuring 800 square meters and 350 square meters cannot be considered as tit bit lands as these lands have the potential of being developed independently. The lands are not appurtenant to any building nor are they without independent access and, therefore, according to the Respondents, cannot be

considered as tit bit lands.

4. The challenge to Regulation 16 has already been considered by this Court and by its order dated 3rd March 2004 the State Government was directed to formulate fresh directives and guidelines which would govern the exercise of powers under Regulation 16 for allotment of plots. Accordingly, these guidelines were framed by the Government and this Court by its order dated 15th December 2004 has considered the same and approved them. The Court, while doing so, has held that Regulation 16 is valid and that the guidelines should be implemented by MHADA in the exercise of its powers under Regulation 16.

5. Faced with this order, the Petitioners now contend that the "piece of land" which has been allotted to the proposed Society is not a "plot" or a "vacant land" and, therefore, does not fall within the purview of Regulation 16. It is submitted on behalf of the Petitioners that the exercise of the power allotting the plot to the proposed Society is invalid as it is mala fide and contrary to the provisions of law.

6. In order to appreciate the challenge of the Petitioners to the allotment of the plot in favour of the proposed Society, it would be necessary to notice a

few of the definitions relevant for our purpose. The word "plot" has been defined in Rule 2(kk) of the Rules as under :-

> "(kk) "Plot" means a demarcated place of vacant land in an approved layout of an area development scheme in an urban area prepared by the Board and approved by the Planning Authority and includes a developed plot with or without plinth area having all or any of the infrastructural facilities such as common roads, electricity, water supply, drainage, provided by the board". (Emphasis supplied)

"Vacant land" has been defined in Rule 2(n) which reads as follows :-

> "(n) "Vacant land" includes land which has been built upon unauthorisedly but excludes land appurtenant;"

Regulation 16 of the Regulations reads as follows :-

> "16. **Disposal of certain plots under directive from Government.** - Notwithstanding anything contained in these Regulations, the plots reserved for amenities or for purely commercial purposes in any layout prepared by the Authority in a land situate in any of the nine Urban Agglomerations namely Greater Bombay, Thane, Ulhasnagar, Pune, Kolhapur, Sangli-Miraj, Solapur, Nashik and Nagpur shall be disposed of in accordance with the direction of the State Government. Similarly, the disposal of not more than two per cent, of the plots reserved for residential use, and to be allotted to individuals, or to the co-operative housing societies, whether proposed or registered, located in such layouts as aforesaid shall also be done in accordance with the directions of the State Government :

> . Provided that, from out of the plots (other than 2 per cent plots as aforesaid) reserved for residential use and have not been disposed of, the Authority shall allot or dispose of any of the plots in accordance with the directions of the State Government."

7. According to the Petitioners, the "piece of land" which has been allotted to the proposed Society cannot be considered a "plot" or "vacant land". The Association says so because the land is not demarcated nor is it a developed plot with or without plinth area having all or any of the infrastructural facilities, such as, common roads, electricity, water supply, drainage, provided by the Board. In addition, the Gas Agency contends that since the "piece of land" is not a "plot", the disposal of this land should be in accordance with Rule 16 of the Rules whereby the tenants are given the first right for allotment of the land under the building. The tenement occupied by the Gas Agency having been constructed by MHADA on the "piece of land", the Gas Agency claims that it should have been offered this land on a priority basis. Rule 16 of the Rules reads as under :-

> "16. **Disposal of land under building**. - The land underneath a building including a building comprising single storied tenements, constructed by the Board and disposed of on an out-right sale basis or hire purchase basis together with the land appurtenant thereto, shall, subject to any directions issued by the Authority from time to time, be conveyed by lease to the person purchasing the building or the single storeyed tenements, as the case may

> be, or to a co-operative society, company or an association of apartment owners formed by the occupants of the building."

8. From the pleadings contained in both the Petitions, it is seen that the allotment in favour of the proposed Society is of 800 square meters and 350 square meters of land. According to the Gas Agency, it is running its agency in a tenement constructed on one of the plots and, therefore, the land cannot be considered as "vacant land". On the other hand, the Association has contended that the land is not a plot of land because it is not demarcated, although in Ground (L) of the Petition, the Association has specifically urged that the plot of 800 square meters should have been offered to the Association which is running an office in a tenement constructed on that plot.

9. Having regard to the definitions of "plot" and "vacant land", we do not accept the submission made on behalf of the Petitioners that the two pieces of land admeasuring 800 square meters and 350 square meters are not "plots". There can be no doubt that these plots form part of the lay out plan for the area. In fact, the sketch annexed to both the Petitions shows the demarcation of these plots. In our view, these plots admeasuring 800 square meters and 350 square meters can by no stretch of imagination be considered as "pieces of land", tit bit lands or lands appurtenant to the

tenements occupied by the Petitioners. These plots have been demarcated and in fact the Petitioners have categorically stated that the plots admeasure 800 square meters and 350 square meters. Obviously, this averment would not have been possible if the plots had not been demarcated. They are part of an approved lay out of an area development scheme in an urban area prepared by the Board and approved by the Planning Authority. Therefore, we have no manner of doubt that the two "pieces of land" are "plots" within the meaning of Section 2(kk). According to the Association, except recreational grounds in the MIG colony, other pockets/pieces of lands are not demarcated on the approved layout and, therefore, cannot be termed as "plots" or "vacant lands". An affidavit of the Assistant Land Manager, MHADA filed in reply to the Writ Petition No.2506 of 2003 indicates that the plot admeasuring 800 sq.mtrs is situate opposite Plots 47 and 48 whereas the plot of 350 sq.mtrs is located between buildings 82 and 75 in Gandhi Nagar. The sketch plan annexed to the petition shows that these plots have been demarcated. Therefore, they cannot be considered as tit bit lands, pieces/pockets of lands as the Petitioners choose to label them. Once these pieces of lands have been demarcated, they must be considered as plots within the meaning of section 2(kk).

10. The contention raised on behalf of the Gas Agency that the disposal of the land should have been made in its favour on the basis of Rule 16 also is without merit. Rule 16 regulates disposal of land under a building. The land underneath a building, including a building comprising a single storied tenement, constructed by the Board and disposed off on an outright sale basis or hire purchase basis, can be conveyed by lease to the person purchasing the building or a single storied tenement or to the co-operative society or association formed by the occupants of the building. Admittedly, the Petitioners are tenants of MHADA. The allotment of these plots in favour of the proposed Society has been made in accordance with Regulation 16 of the Regulations. These plots need not be allotted to tenants of a tenement constructed by MHADA. These plots are not lands appurtenant to any building and, therefore, Rule 16 is not attracted. Therefore, the question of disposal of the land in favour of either of the Petitioners does not arise. In our view, the challenge to the allotment is misconceived and the Petitions deserve to be dismissed.

11. Reliance is placed on the judgment of the Madras High Court in the case of *HIG Flat Owners Welfare Association* vs. *Tamil Nadu Housing Board and others*, **AIR 2000 MADRAS 446**, in support of the submission that a

Writ Petition to cancel the allotment made in favour of one party by MHADA is maintainable. In our view, this judgment need not detain us, as in the present Petitions, there is a dispute as to whether the piece of land allotted to the proposed Society can be considered either a "vacant land" or a "plot". Furthermore, both the Petitioners have alleged mala fides against the Respondents for having allotted the piece of land to the proposed Society. The mala fides as alleged by the Gas Agency are contained in paragraph 20 of its Writ Petition. The Association has in paragraph 4.18 in its Petition contended that the allotment has been made mala fide since the request of the Society for allotment had earlier been rejected and it was only because of the proposed Society having several high ranking Government officials as its members that the allotment has been made. The learned Counsel for the Petitioners in both the Petitions point out that paragraph 16 of the affidavit of Gopalchandra Tripathi supports their case that the allotment is totally mala fide. The alleged mala fides would have to be proved by cogent evidence before an appropriate forum. In such circumstances, in our view, the Writ Petitions are not maintainable and must be rejected.

12. Reliance is placed on the judgment of the Calcutta High Court in the case of *Krishan Kumar*

Agarwala vs. *Reserve Bank of India and others*, **AIR 1991 CALCUTTA 272**. It is held in this judgment that even though the provisions of the Civil Procedure Code do not apply *ex proprio vigore* to the proceedings under Article 226 of the Constitution of India, the principle contained in the proviso to Rule 4 Order 39 is eminently reasonable so as to warrant universal application. In our view, since we find the Writ Petitions itself are not maintainable, this judgment has no application.

13. Whether or not the land in question is a tit bit land or vacant land cannot be decided in a Writ Petition; the Association has labelled the land as a tit bit land and has claimed the allotment on this ground. On the other hand, the gas agency has claimed that it is using the land to store gas cylinders and is therefore, entitled to the land, it being land underneath the building. These are contentions which raise disputed questions of fact which cannot be considered in exercise of the Writ jurisdiction of this Court. Neither of the Petitioners have been able to show that they have any vested right to the plots which are being allotted to the proposed society. Moreover, with the Petitioners vying for the same plot of land, their respective rights cannot be decided by this Court in its writ jurisdiction.

14. Writ Petitions rejected.

15. In view of Writ Petition No.75 of 2004 being rejected, nothing survives in Notice of Motion No.669 of 2005 and the same is disposed of accordingly.

(V.G. PALSHIKAR, Ag.C.J.)

(SMT.NISHITA MHATRE, J.)